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INDUSTRIAL CONCILIATION AND ARBITRATION.

A NEW ZEALAND EXPERIMENT.—THE HISTORY OF A FAILURE.

(For The Review.)

By HON P. J. O'REGAN.

The New Zealand Industrial Conciliation and Arbitration Act, a statute which has received an unusual share of attention throughout the civilized world, was passed into law in 1894, and has accordingly been now in operation fifteen years. We are thus able to say something of its practical effects, and, apart from the politico-economic standpoint, are in a position to judge to what extent (if any) it has realized the anticipations of its supporters.

The measure was passed in the first session of the Parliament elected in 1893, and practically it encountered no opposition in either Assembly. It had been fiercely debated in the House of Representatives during two sessions of the previous Parliament. In 1893 it was passed by the House of Representatives, but had been rejected by a large majority in the Legislative Council. The elections of 1893 gave the Seddon Government a large majority, and the result of the popular verdict was that all the policy measures of the Government were passed during the next Parliament with little or no opposition. It may be stated, by the way, that in 1890 the country had experienced the rigors of a general strike. It cannot be said that many people realized all the potentialities of the Arbitration Act. Everybody had bitter recollections of the strike, and hence the temper of the country was favorable to any measure which promised to lessen their frequency or ameliorate their effects. Hence it was that the new measure was distinctly popular from the time it was forecasted by its promoter, the Hon. W. P. Reeves, and some of the most prominent of the Parliamentary Opposition were found in complete accord with the Government in connection with it.

The Act provided for the constitution of a Court of Arbitration and of a number of Boards of Conciliation. The Court consisted of three members, and the President was (and is) a Judge of the Supreme Court, the two lay members being representatives of the labor unions and of the employers

respectively. The Judge, like all our Judges, is appointed for life, and the two representatives are elected for a term of three years. The Court has jurisdiction throughout the entire country, and hence it is travelling continually. The country was divided into eight industrial districts, and within each of these a Board of Conciliation had a jurisdiction inferior to that of the Court of Arbitration. Each Board consisted of five members, two representatives being elected by the labor organizations and employers respectively. If these failed to select a Chairman, the Government appointed a person to fill that office. The Boards, like the Court, existed for three years. Here I may say that during the session of 1908 the Boards of Conciliation were abolished, and the Act amended by appointing three Conciliation Commissioners, each of whom presides over a tribunal chosen by the parties to every dispute. If a settlement is not brought about by this body (called an "industrial council"), the dispute then goes on as before to the Court of Arbitration, the jurisdiction of which body is final.

It is interesting to note that one of the first effects of the statute was to multiply the number of labor organizations. Until last year the minimum number of persons required to form a union under the Act was seven. Under the amending statute the minimum has been raised to fifteen. From the outset workers could not take advantage of the provisions of the Act until they had become organized as a union. Either individual employers or unions of employers may be parties to an award under the Act, but, strictly speaking, the individual worker cannot be a party to an award at all. The parties to each dispute and each award under the Act are unions of workers on the one side and unions of employers and individual employers on the other. Every labor union has by virtue of the Act been given the status of a corporation or public company, and the secretary of each union is its official mouthpiece, just as the manager or secretary of an ordinary trading company is its agent or mouthpiece. Thus it has come to pass that practically all of the men generally styled labor leaders in this country are secretaries of unions.

But, although the Act has had the effect of accelerating the organization of labor, it cannot be said that it has raised the standard of labor organizations. Realizing that, in order to benefit by the Act, they must form a union, men have been drawn into unions for the sole purpose of increasing the wages in their particular trade or occupation. They seldom look beneath the surface of things or trouble themselves about the cause of declining wages. Indeed some of the most influential unions are protectionist combinations, and have been found working in unison with their employers in lobbying a tariff into law! About the land question very few of them appear to trouble themselves, and if the land question is discussed by them at all, it is generally for the purpose of pushing some scheme of State land purchase for workmen's homes or settlements, all of which experiments have so far proved pitiable failures. At some of the union conferences resolutions are passed in favor of a Fair Rent Act, the object of which would be to arraign landlords who build houses before some such public tribunal as the Court of Arbitration, upon

whom would devolve the duty of fixing a "fair rent." One would think that common sense, to say nothing of a knowledge of political economy, would convince men of the absurdity and utter impracticability of such a measure. High rents are caused by the holding of valuable land out of use. Often the man who builds a house—and this is invariably true of the man who purchased land during the last few years when values have been at a speculative limit—receives no more than a fair return for his outlay, owing to the price he had been obliged to pay. A Fair Rent Act would mean that the man who builds houses would be harried with further vexatious interference, while the mere speculator who does nothing to improve his land at all would escape as free as before. Yet these obvious facts never seem to dawn upon our official "labor leaders." It is no exaggeration, therefore, to say that the multiplication of labor unions since the Arbitration Act does not imply that higher degree of intelligence and political activity which one might expect to find accompanying the consolidation of labor.

When a union has been formed it formulates certain "claims." These are printed along with an attached list of all the employers whom it is proposed to bind under the Act, and are duly filed with the Registrar of the Court. That officer sends a copy of the union's claims to every employer mentioned, and fixes a time for hearing the dispute. As the Act stood at first, the dispute would first be referred to the Board of Conciliation of the particular district, which body had power to cite evidence. This was found to be a perfunctory and expensive procedure, however, and employers accused the labor representatives on the Boards of fomenting disputes for the purpose of keeping themselves engaged. In 1900, accordingly, an amendment was passed into law enabling the employers, by complying with a certain procedure, to carry disputes direct to the Court without reference to the Board at all. Thus the Boards became rapidly discredited, and last year, as already stated, they were abolished altogether.

If the Board did deal with a dispute it had no power to make a final award. It simply filed its recommendations. Either party could within one month take these to the Court; if this was not done the recommendations became what was termed an "industrial agreement," but it was often formally referred to the Court to be pronounced an award. In the early stages of the Act this last process was very frequent, but of late years it became the exception, although now under the new system of industrial councils, fewer cases reach the Court than in the later days of the Boards of Conciliation. No award can last longer than three years, and in practice an award is seldom given a longer duration than two years.

Once an award has come into existence all the employers mentioned in the citation list are bound by it, and so also is every employer commencing business in the particular trade affected after the date of the award. Employers in business at the date of the award are not bound, unless included in the citation list, but the Act provides machinery for having them made parties to the award. It is a punishable offence to employ anyone in contravention

of an award—that is to say, for lower wages than the minimum fixed thereby, or for longer hours than those prescribed. No small portion of the duties of the Court of Arbitration until last year consisted in the hearing of cases of breach of awards, but now the work is divided with the ordinary Magistrate's Courts.

I have mentioned that one effect of the statute has been to multiply labor organizations. I may add that one other incidental effect has been to multiply the number of members of many of the organizations far beyond the number of really genuine unionists. Soon after the Act came into operation unionists complained that non-unionists were receiving all the benefits of the Act without any of the loss. Accordingly a strong demand set in for preferential employment of unionists, and finally a clause was adopted providing for preference to unionists if (and so long as) the entrance was maintained at a low figure, and the weekly or monthly subscriptions at a rate not exceeding a prescribed maximum and the candidate elected without ballot or test of any kind. This clause has since become embodied in a very considerable number of awards, and its inevitable effect has been, as we see, to drag many men into the unions. Thus the unions have become strong financially, but their efficacy is by no means proportionate to their numerical or financial strength, for the obvious reason that persons have become unionists merely in name in order to obtain the preference of employment. The present depression—the first we have experienced for fifteen years—has brought home to everyone the utter uselessness of preference to unionists when employment is slack.

At first the Act was decidedly popular with the mass of workers. The reason was that increases were obtained in wages in nearly every case. After a time, however, the Court refused to make further increases, and now-a-days each award is practically a re-enactment of its predecessor. The result is that the Act has lost much of its popularity. Disputes are now settled by industrial councils, not because the workers are satisfied, but because they feel convinced that they can get as much by that means as by invoking the machinery of the Court of Arbitration with its incidental expense and delay. The Court has exclusive jurisdiction to deal with cases under the Workers' Compensation for Accidents Act, and were it not for this fact, there would now be very little work for it to do. It is safe to predict that at no distant date the Court of Arbitration will shrink into disuse, and will then be abolished.

Once an award has been pronounced or an industrial agreement arrived at, freedom of contract in that particular trade is gone, unless it be to work for fewer hours or at higher wages. Thus if an employer were to agree with a worker to pay him a wage lower that the minimum prescribed by the award, the worker would not be bound, but could recover the difference between the wage he received and the minimum wage. This is a natural consequence of the attempt to fix wages by law, as in the nature of the case the law would be useless if it were possible for the parties to agree to work for wages lower than the minimum prescribed. It is certain, however, that few if any critics

have even yet realized what a sweeping change is involved in the curtailment of contract. It is not so much a legislative change as a revolution—a reversal of one of the basic principles of modern civilization. Edmund Burke rightly maintained that change should be in the way of development—the present growing out of the past and paving the way for the future. Hence it was that Burke denounced the French Revolution, as constituting a break with the past. I have touched on a very large question, no doubt, but I believe that Burke was correct, much as I differ from his "Reflections" in other respects. Again, according to Sir Henry Maine, contract is one of the marks of modern civilization. It is the predominance of contract that distinguished the modern from the ancient world. Hence his famous doctrine that through the ages human progress has been "from status to contract." In ancient Rome, for example, a man might be a citizen or a foreigner, a freeman, a freedman, or a slave, an infant, an "*adoloscens*," or a "*juvenes*," a plebeian or a noble; and his legal rights, capacities, and incapacities, would differ accordingly. Thus it is that we have status rather than contractual capacity in Rome. In order to realize what this means we have only to picture to ourselves the caste system as it obtains in India to-day. In India we find the past reproduced in the present, for the civilization of India has remained stationary for ages, and modern India gives us a picture of the state of things which existed among our Indo-European ancestors. There are many who sneer at "freedom of contract," as though it implied the degradation of the laborer, and this view is not without its justification. But it by no means follows that freedom of contract, at any rate under social conditions that would leave the worker really free to make his own bargain, is necessarily a bad thing. At any rate it has been abundantly demonstrated in this country that to abolish contract by legislation is not to improve the condition of the laborer, while it entails consequences too injurious to justify the belief that the present system can long continue.

The reader will think, naturally enough, that the term, "dispute," as used in connection with the Arbitration Act, has the same meaning as the word has in the popular and ordinary sense. Such is by no means the case, however, as I shall presently show. An "industrial district" is necessarily extensive. The industrial district of Wellington, for example, covers nearly half the area of the North Island of New Zealand. Included in the district is the City of Wellington. Included in it also are many smaller towns and not few villages, while, needless to say, by far the greater portion of the district is rural territory. As a rule the "disputes" are commenced in the City of Wellington. There may be a dispute, using the word in the popular sense, in Wellington itself; but when a union comprising fifteen persons shall have filed its claims, there is a "dispute" within the meaning of the Act, throughout the entire industrial district. The result is that employers are frequently cited between whom and their employees no dispute really exists. It may be asked why the dispute should not be kept within its proper limits and the award made to bind only the parties between whom a dispute really exists. But if that were proposed,

the employers themselves would be the first to object, on the ground that they would be obliged to compete with men who worked longer hours and paid lower wages than they, and obviously there is too much force in the contention to ignore it. The consequence is that, though an award may be, and sometimes is, limited to a prescribed part of the industrial district, as a rule it covers the entire district. Hence many people are drawn into disputes who really have nothing in common with the parties primarily concerned therein, and there is much irritation in consequence, for an award of the Court of Arbitration is really part of the Act itself, to enforce which is the duty of State-paid officers. The reader can readily understand that the enforcement of the awards brings persons into the law courts who otherwise would never be seen there.

Nothwithstanding its title the real effect of the Act has not been to imbue employers with a spirit of conciliation, but rather the opposite. It is no exaggeration to say that nowadays in this country industry, like government under our party system, is being carried on by two hostile factions. Once an award is pronounced each party is on the qui vive to have the other punished for its non-observance. Employers have their salaried representatives and the unions have their paid secretaries. After an award has been pronounced both sides "talk at" each other through the medium of press "interviews," and in these discussions one is reminded of the "rarity of Christian charity." If a serious difference of opinion arises between an employer and his men, organizations on both sides participate therein, and recrimination is indulged to an extent the reverse of reassuring to thinking men, though by many it has come to be regarded as a matter of course. If an award is not satisfactory to one side—and this is the rule—that side keeps its grievance alive with a view to getting better terms when the award shall have expired and the dispute reopened. To such a pass have we come in this country after fifteen years of industrial conciliation and arbitration.

When Mr. Ramsay MacDonald, M. P. for Leicester, visited this country nearly two years ago he delivered himself of some telling criticism of our labor laws generally and our Arbitration Act in particular. He pointed out that, no matter how satisfactorily they might work in a sparsely populated country like ours, it would be absurd to infer that they would succeed equally well in a populous country like England. There industry was so subdivided that it would be impossible to solve the problem of expense of administration. Mr. MacDonald was unquestionably right, although such criticism comes rather unexpectedly from a gentleman who proclaims himself a Socialist whose object is to secure the nationalization (or socialization) of all industry. Already we have experienced something in this country which goes far to show the soundness of Mr. MacDonald's criticism. For example, there are employers in this country who are bound by as many as a dozen awards. A builder in the city of Wellington, for example, will be bound by a carpenters' award, a plumbers' award, a bricklayers' award, a drivers' award, a painters' award, a furniture workers' award, a plasterers' award, a building trades' laborers'

award, and others. How many awards would there be in any one of the great world cities where industry is so minutely subdivided? Quite recently our Government resolved on a sweeping policy of retrenchment, in consequence of which it is anticipated a million and a quarter dollars will be saved in administration annually. This is a tacit admission that we have been having extravagant government, and we have been placed in that position largely owing to the fact that our restrictive legislation has necessarily involved expensive administration. Our experience goes far to prove the truth so often insisted on by Henry George—that the simpler and cheaper government is the better. But if Government is to be simple and cheap its functions must be limited.

Lord Palmerston once said that an Act of Parliament could do almost anything, except to change a man into a woman or *vice versa*. This was an intentional exaggeration; but there is no doubt a widespread and misleading belief in the efficacy of Acts of Parliament. Nevertheless, the fact remains that there are some things which no legislation can accomplish and that there are also many things which individual enterprise can accomplish much more satisfactorily. Without here attempting to define the real functions of the state, it is an historical fact that the state cannot regulate wages, prices of commodities, interest on money, or hours of labor. The attempt has often been made, but it has always failed and will ever fail. New Zealand cannot hope to succeed in accomplishing what other nations have failed to do. The functions of production and distribution are governed by natural laws, and human laws can succeed only in so far as they conform to these. The knowledge of political economy will explain the facts recorded by history.

The late Mr. H. D. Lloyd of Boston once wrote a book on New Zealand, in which he described us as "A Country Without Strikes." It is quite true that from the time of the passing of the Arbitration Act until and long after the date of Mr. Lloyd's visit to this country there were no strikes, although it is very questionable whether a strike now and then would not be preferable to the "armed peace" obtaining between the rival organizations of employers and labor unions. Still, within the past three years we have had several more or less serious strikes of the old-fashioned kind, and it is now clear to everybody that the Act gives no real security whatever against the occurrence of strikes. It is true that the Act contains provisions for the punishment of strikers by fines and by the dissolution *ipso facto* of their award. But it is quite certain that if any considerable number of men determined to strike they would do so in defiance of the law. Until the amending Act of last year it was possible to punish the non-payment of a fine for breach of the Act by imprisonment, but the popular dislike to imprisonment was so strong that Parliament abolished it altogether. Even now it is quite certain that organized passive resistance to an unpopular award would meet with a very considerable measure of support. The provisions of the Act forbidding financial aid to strikers can be easily evaded by paying the money to the wives and children of the strikers. Thus it is abundantly clear that the state becomes impotent

when it attempts to legislate beyond its proper sphere. If Lord Palmerston were really sincere in the dictum I have quoted, it is clear that he had no experience of such a measure as our Arbitration Act, for it is certainly as impossible to fix hours and wages by law as to effect a change of sex! It is only the obvious impossibility in the latter task that prevents Parliaments from making the futile attempt. The former, however, is not less futile.

I do not deny that for the past fifteen years we have enjoyed exceeding prosperity. Mr. H. D. Lloyd was not inaccurate in describing conditions as he saw them in this country. It is unquestionably true that in many cases the Arbitration Act has secured shorter hours and better wages for a limited number of workers. It is quite abvious, however, from what I have stated that these benefits must necessarily be limited to laborers who are able to organize. Now there is a huge mass of labor which cannot be organized, and this mass has not benefitted by the Arbitration Act at all. A couple of years back an attempt was made in certain districts to organize the farm laborers, but the movement in every case came to nothing, partly because many of the farm laborers were either opposed or indifferent to organization, and partly because of the widespread discontent among the farming class at the prospect of having the hours of farm labor and rates of wages fixed by law. The visit of a conscriptionist officer to the French or German peasant, or of the process server to the Irish tenant, would be hardly less popular than the visit of a labor organizer or an inspector of awards to the cowshed of a New Zealand farmer. When the Act was passed nobody dreamed of its ramifications extending to farm laborers. Power is now given the Court to refuse to make an award if it does not think fit so to do, and it is abundantly clear that the Court will not make an award to irritate the farming community. Two years ago a movement was started to organize the domestic servants, but there were such strong expressions of discontent at the prospect of having the sphere of the housewife invaded by the inspector of awards, that provision was made in the amendment passed last session restricting the scope of the Act to purely industrial matters. Thus it has come to pass that Parliament has at last been compelled to recognize the limitations of the principle of industrial conciliation and arbitration.

In order to understand the cause of the extraordinary prosperity which this country has until very recently enjoyed it is necessary to get "back to the land." When the Liberal Party came into office in 1891 a Land Act was passed, the effect of which was to open vast areas of land under conditions which made it possible for men with little or no capital to get farms. Soon after this was passed an Act providing for the compulsory purchase of large estates, all of which were thrown open for settlement to the man of small capital. Last, but by no means least, a tax on land-values was imposed in 1892, the effect of which has been, in consequence of the abolition of all direct taxes on improvements, to encourage the beneficial utilisation of land. All this has necessarily opened up opportunities for the employment of labor, and hence it is quite certain that we would have been prosperous had the

Arbitration Act never been heard of. The inevitable effect of our prosperity, however, was to enhance the value of land. Hence it is no exaggeration to say that the increased money wages secured in many instances by the Act, have been of no real benefit to the worker, for, as Mr. Tregear, the Secretary for Labor, pointed out some years ago, the increase in wages has not kept pace with the increase in rent. Land values have more than absorbed the benefits the laborer has received, and hence to-day, after fifteen years under the Arbitration Act, the laborer is as dissatisfied as ever he was, and has ceased to hope for better things through the state regulation of his hours of labor and of his wages. One reform, and that alone, will bring land-values to their proper level, their adequate taxation. Sooner or later this reform will triumph with us as it will elsewhere, and I am bound to state that we have made a good beginning with it. We have made no more than a beginning, however, but little else that we have accomplished since the Liberals came into power is destined to endure. Certainly our boasted Industrial Conciliation and Arbitration Act cannot and should not endure.

AUCKLAND, NEW ZEALAND.

THE GOSPEL OF THRIFT ACCORDING TO SAINT ANDREW.

(For the Review.)

By EDMUND CORKILL.

Mr. Carnegie says in his new book that he believes that thrift lies at the root of the progress of our race. If that belief be true then some of the greatest reformers that ever lived failed to see the supreme importance of a *virtue*—Mr. Carnegie so describes it—that they as reformers could not afford to ignore. So great a reformer as the philosopher of Nazareth not only ignored it, but, to use the language of Keir Hardie as quoted by Mr. Carnegie, showed a "lofty contempt for thrift and forethought." It is significant that he whom millions of human beings—including some of the wisest and the most virtuous—have regarded as the greatest of all teachers, should have omitted so indispensable a virtue in his code of morals. Possibly this point may become clearer after closer examination. At the outset an imperative question leaps to the front. What is the nature of this progress having thrift as one of its roots? That it consists of a variety of elements is evident, but the innate significance of the term limits its application to such causes and effects as make for an *advance*, a forward movement in the direction of physical and moral improvement, therefore anything retrogressive or obstructive in its tendency cannot logically lie within the scope of real progress. Under this test can thrift be rationally regarded as a radical constituent of human progress or civilization?

To satisfactorily answer this question it is necessary to first consider